



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 5717-02
28 January 2003



This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 January 2003. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You reenlisted in the Marine Corps on 3 February 1995 after more than 10 years of prior honorable service. On 3 February 1999 you extended your enlistment for a period of 18 months.

On 2 March 2000 you were counselled regarding borrowing money, indebtedness, and gambling. On 9 March 2000 you submitted a rebuttal to the foregoing counselling in which you stated, in part, that you did not borrow money.

On 4 April 2000 you received nonjudicial punishment (NJP) for one day of unauthorized absence (UA) and were awarded restriction for two months and a forfeiture of \$2,556, all of which was suspended for six months. On 16 June 2000 you were convicted by summary court-martial (SCM) of three periods of failure to go to your appointed place of duty and disrespect. You were sentenced to restriction for 60 days, which was suspended for six months, and a reduction in rank from gunnery sergeant (GYSGT/(E-7) to

SSGT/(E-6). On 27 June 2000 you submitted a written 'request mast' stating, in part, that the SCM was illegal and unfair, and that the charges of which you were convicted by SCM were unfounded. However, your request was denied because the applicable regulation states, in part, as follows:

Request mast is not intended to be used as a means to collaterally attack the proceedings, punishment, or findings and sentence resulting from disciplinary action brought under the Uniform Code of Military Justice (UCMJ).

On 3 August 2000 you extended your enlistment for 13 months. Approximately six months later, on 12 February 2001, you received NJP for drunken and reckless driving and driving under the influence of alcohol. The punishment awarded was a \$2,000 forfeiture of pay.

On 28 February 2002, while serving still in the rank of SSGT, you were honorably released from active duty and transferred to the Fleet Marine Corps Reserve.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service and the contention that you were unjustly reduced in rank due to an illegal court-martial. It further considered your request for reinstatement to GYSGT and to have your record expunged of derogatory material. Nevertheless, the Board concluded these factors and contention were not sufficient to warrant reinstatement to GYSGT or removal of the court-martial from your record. Further, the Board has no authority to review the findings of guilt in courts-martial and must limit its review to determining whether the sentence should be modified as a matter of clemency. The Board concluded that given the nature of the offenses of which you were convicted at SCM, and the counselling and two NJPs, reinstatement to GYSGT was not warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director